Supreme Court, U.S.
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NO. 82-975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

MEMBERS OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES; THE CITY OF LOS ANGELES; and EDWARD D. LONGLEY, as Director of the Bureau of Street Maintenance for the City of Los Angeles,

Appellants,

vs.

TAXPAYERS FOR VINCENT, an unincorporated political association, and CANDIDATES' OUTDOOR GRAPHICS SERVICE (COGS), a California corporation,

Appellees.

ON APPEAL FROM UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPELLANTS' BRIEF IN OPPOSITION TO THE MOTION TO AFFIRM

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Appellants submit this Brief in Opposition to the Appellees' Motion to Affirm. This Brief is filed in order to clarify the issues and the need for this Court to decide those issues.

THE DECISION BELOW WAS NOT BASED ON AN EVIDENTIARY MATTER: IT WAS RATHER PREMISED ON CONSTITUTIONAL DOCTRINE.

Appellees contend that this case is not now ripe for review primarily because they construe the decision of the Court of Appeals as having turned on an "evidentiary matter." Appellees' Motion to Affirm, p. 4. To the contrary, that decision was grounded firmly in the application of constitutional doctrine.

The Court of Appeals imposed a new constitutional standard in holding that the City could not constitutionally prohibit the posting of signs on public property in order to reduce "visual clutter" without demonstrating "that it is engaged in 'a comprehensive coordinated effort...to address other obvious contributors to an unattractive environment.' " (App. 10a, quoting from *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 531 (1981).)

The appellees now claim that the City failed to make such an evidentiary showing. However, the case actually turned on the burden imposed by the Court of Appeals, a burden which the City did not have when the summary judgment motions were decided by the District Court.[1/] Moreover, the imposition of that burden is inconsistent with prior decisions of this Court, including this Court's recent decision in *Metromedia, supra.* Therefore, it is a burden which the City should not be required to meet.

1/ The Court of Appeals reversed and remanded this case to the District Court with an instruction to enter partial summary judgment in favor of appellees on the constitutional issue involved.

CONCLUSION

Because the decision of the Court of Appeals was based on unsettled constitutional doctrine, such decision is ripe for review.

Therefore, appellants respectfully urge this Court to note probable jurisdiction.

Dated: January, 1983.

Respectfully submitted,

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